

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JAMES COLEMAN #123431,

Plaintiff,

Case No. 2:06-cv-33

v.

Honorable R. Allan Edgar

MICHIGAN DEPARTMENT
OF CORRECTIONS, et al.,

Defendants.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge on August 29, 2008 (docket #89). The Report and Recommendation was duly served on the parties. The Court received objections from the Plaintiff, as well as a response by Defendant CMS and a reply to that response by Plaintiff. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

In his objections, Plaintiff asserts that the Magistrate Judge was wrong in each of his conclusions. However, Plaintiff merely reasserts the statements he made in responding to the motion for summary judgment. As noted by Defendant CMS in its response, Plaintiff objections are entirely conclusory and are devoid of any factual support.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court and Defendants' motions for summary judgment (docket #56 and #65) will be GRANTED dismissing Defendants MDOC, Hofbauer, and Caruso with prejudice and dismissing Defendants Mohrman, Paquette, Mohr, Buckner, McCarthy, DeRosie, Armstrong, Lutjens, Tallio, Pokley, Stapleton, Debski, Brown, Napel, Niemi, and CMS without prejudice for failure to exhaust administrative remedies.

IT IS FURTHER ORDERED that the only remaining Defendants, Herman Eleby, Unknown Gooseberry, B. Velmer and Pam Pearson, have never been served. These Defendants will be dismissed for lack of service and Plaintiff's action will be dismissed in its entirety.

FINALLY, IT IS ORDERED that an appeal of this action would not be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal. Should plaintiff appeal this decision, the Court will assess the \$255 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless plaintiff is barred from proceeding *in forma pauperis*, e.g., by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the \$455 appellate filing fee in one lump sum. Accordingly, should plaintiff seek to appeal this matter to the Sixth Circuit, the appeal would be frivolous and not taken in good faith.

Dated: 2/18/09

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE